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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/536,982

05/31/2005

Shlomo Lewkowicz

P-4433-US

6340

49443 7590 10/31/2008
Pearl Cohen Zedek Latzer, LLP
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EXAMINER

LAMPRECHT, JOEL

ART UNIT

PAPER NUMBER

3737

MAIL DATE

DELIVERY MODE

10/31/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/536,982	Applicant(s) LEWKOWICZ ET AL.	
	Examiner JOEL M. LAMPRECHT	Art Unit 3737	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/30/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims **24-39, and 42-44** are rejected under 35 U.S.C. 103(a) as being unpatentable over Luiken (US 2001/0055566 A1) in view of Alfano et al (US 6,240,312 B1). Luiken discloses tumor screening related methods including administration of fluorescent dye and irradiation with visible and fluorescent (excitation) radiation to produce images stored on an image sensor (0004-0007) for the purpose of diagnosing cancerous tissues. The light excitations including both monochromatic light, polychromatic light, and combinations of flashing sequences (0009, 0018-0024), The acquisition of real images and fluoroscopic images during different time periods (0018-

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0028, 0030), washing of excess dye before image-capturing (0029), and administrations of antibodies associated with GI cancer including CEA (0034-0038). Luiken does not disclose the use of an ingestible imaging capsule, rather focuses on methods involving endoscopes of certain capabilities and other techniques rather than the specific properties of the endoscopes or other imagers used. Attention is then directed to the secondary reference by Alfano et al which discloses an ingestible internal device for wireless capturing and imaging of the GI tract (Col 2 Line 10-65) to enable cancer diagnosis and treatment (Col 3 Line 65- Col 4 Line 59). It would have been obvious to one of ordinary skill in the art at the time of the invention to have utilized the methods of wireless transmission and endoscopy of Alfano et al with those methods of Luiken for the staining and diagnostic imaging of tissues to enable portable diagnosis of cancer and other diseases with micro-scale technology and onboard storage/transmission.

Claims **40 and 41** are rejected under 35 U.S.C. 103(a) as being unpatentable over Luiken (US 2001/0055566 A1) in view of Alfano et al (US 6,240,312 B1) as applied to claim 24 above and in further view of Akashi et al (novel Gastric Cancer Associated Mucin Antigen Defined By A3D4). Luiken in view of Alfano et al discloses all that is listed above but fails to disclose the use of an antigenic determinant such as Gastric Mucin for diagnosis. Attention is then directed to the secondary reference by Akashi et al which discloses such a determinant for the purpose of diagnosing gastric cancer. It would have been obvious to one of ordinary skill in the art at the time of the invention to have utilized this Mucin determinant as disclosed by Akashi et al with the methods of Luiken in view of Alfano et al to correctly diagnose cancerous tissues in the GI tract.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joel M. Lamprecht whose telephone number is (571) 272-3250. The examiner can normally be reached on Monday-Friday 7:30AM-4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Casler can be reached on (571)272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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JML

/BRIAN CASLER/

Supervisory Patent Examiner, Art Unit 3737